UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CONN CREDIT I, LP, Plaintiff and Counter-Defendant, v. SHERMAN ORIGINATOR III LLC, Defendant and Counterclaimant.	Civil Action No. 4:15-cv-03713

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ORAL AND VIDEOTAPED DEPOSITION OF

MICHAEL J. POPPE

OCTOBER 5, 2016

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ORAL AND VIDEOTAPED DEPOSITION of MICHAEL J. POPPE, produced as a witness at the instance of the DEFENDANT AND COUNTERCLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on OCTOBER 5, 2016, from 8:39 a.m. to 4:35 p.m., before Stephanie M. Harper, RPR, CSR in and for the State of Texas, recorded by machine shorthand, at the offices of U.S. LEGAL SUPPORT - HOUSTON, 363 North Sam Houston Parkway East, Suite 1200, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto; signature having been waived.

JOB NO. 225354

EXHIBIT
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Q. That's how you guys talked about it?
A. That's how we generally talk to it. We don't have an specific internal definition of "subprime."
Q. All right. Did -- did -- and obviously, I deposed Mr. Walton, as you know, and he explained to me to some extent the -- the algorithms and the other processes that you use in your credit underwriting. But from a higher level, from a strategic standpoint, does someone at -- does someone in Conn's management kind of set what the -- the credit score ranges of acceptable customers, what -- I guess what the floor is? I'm sure you'd be happy to go all the way up to 800. But what's the -- what's the floor?
A. So we will -- it's varied over time. But we're not specifically underwriting to FICO. It'll be a component in the algorithm, in the strategy, in the ultimate decision process. But we have starting in early 2013, we had -- originations, we had a custom score we built with support for FICO that really used bureau and application characteristics to development a score.
Q. Okay.
A. And then over time, we would set a -- we might set a minimum FICO score as just an early -- as just kind of a subjective cutoff to say, "We're just not

going to go below here." And that moved around over time, but it's generally been in -- depending on time frame and whether it's a new or existing customer, call it generally in the 500 to 550 range, and it's floated over time. It may have been higher or lower at different times, but that's kind of generally where the -- where the cutoff's been.

Q. Okay.

A. And then we would also -- somebody without a FICO score, we will underwrite those people, too.

Q. Okay. Has -- has the cutoff ever been below 500?

A. For -- in limited circumstances, yes.

Q. Okay. Can you tell me what you remember about those, like from a time period or what the circumstances were?

A. I'd have to go back to refresh my memory on details. It was not a significant portion of our origination, so it wasn't a significant volume of accounts that got underwritten. But for -- when we started opening new stores late, you know, call it "fourth quarter" or late 2012 and into 2013, we would -- for newer stores, we would -- while we were opening the stores, we might start a little lower as we are ramping up the store and then ultimately moved the

stores to kind of the standard cutoffs and rules.

Q. Okay.

A. They still would go through the basic decision algorithm, so they could -- even if -- even if they were below -- even if they were above that lower cutoff, they may still get declined.

Q. Right. Okay.

A. It didn't mean that they got approved; it meant that our custom score indicated that they actually would be a good customer. By setting that FICO minimum doesn't mean that we should -- that the customers below that FICO minimum would be a bad customer. We just set that arbitrarily as a -- as floor on the FICO we would put in the portfolio.

Q. All right. So I think what you're saying is everyone still got underwritten through the -- the algorithm, is what I'm going to call it?

A. Yep.

Q. You had a cutoff, so you could -- you could go through the algorithm and say -- let's assume the cutoff's 500. You could go through the algorithm and -- and the result would be "yes," but if it's 499, you're going to say "no"?

A. That's right.

Q. But you'd still have people above 500 who you

might say "no" to as well?

A. Absolutely.

Q. Okay. Understood. All right.

Do you know when -- through what period of 2013 that cutoff was below 500?

A. It would be -- it depended on the store. So it wasn't for the entire company. It wasn't for every store. It would be for specific stores for periods of time.

Q. Okay.

A. Limited periods of time.

Q. And that was something that was done in conjunction with the -- the new store strategy that Conn was implementing in 2012 and 2013?

A. Yes, it was related to the -- to the new store openings.

Q. It's a -- I don't know if you would use this phrase, but it's kind of a customer acquisition strategy of getting people in the door and into your system, hopefully making them repeat customers?

A. It was used to build the store -- the customer base in new stores.

Q. Okay.

A. Communicate the message of the availability of credit.

been there for -- for 20 years?

Was the overall underlying -- excuse me. Was the overall underwriting relaxed in order to grant more credit at the new store, or was it simply that the cutoff was lower?

A. For -- and other than a brief period of time, and I'll come back to kind of late Decem- -- late -- from late '12 into January/February of '13, I'll come back to that period --

Q. Okay.

A. -- it was purely just the -- the cutoff.

Q. Okay.

A. The decision algorithm verification rules were all the same. For, I want to say four or five stores, I'd have to go confirm it, from like November of '12 to early February of '13, we used different verifi- -- we tested using some different verification rules to also make it simpler for newer customers.

Didn't like the results we saw, so we stopped that practice. So it was a limited number of stores for a very short period of time. It wasn't a significant percentage of -- of dollars originated.

Q. Okay. And in terms of the verification rules, you're talking about a -- like an employment and income verification or --

First, the -- because we give this customer the ability to buy these products with an affordable monthly payment because they don't have the ability to write the check for them, typically, they're able to buy a higher quality, better featured product. So they're buying a more expensive product than they would otherwise.

The other key point to understanding the difference between us and the market is we had changed our product strategy. We didn't sell and don't compete at the low-price point products with Best Buy and those guys. We're not selling a bunch of 20 and 27-inch TVs. We've eliminated most of that product from our floor. Our customers -- if they want a $300 TV, they'll get it at Walmart.

Q. Okay.

A. They don't come to us. We don't add value to that transaction, so we just eliminated those transactions. Our average selling price used to be much closer to the market before we changed our product strategy. So we just don't sell most of the low-price point product.

All we sell is the better product. So if that's what you're looking for, is a 55-inch TV, then we can help you with that. If you want a 30, go to

A. But our typical methodology is weighted average.

Q. And -- and so it's weighted by the amount of financing that that particular customer gets at that particular score?

A. That's right.

Q. Okay. All right. Can you look at Page 26, please?

A. Yes.

Q. So can you tell me just what that chart represents and is depicting?

A. So the bars are the percentage of sales financed during each of those fiscal periods. And the line is the average credit score at the end of the period. So without verifying it -- I have to verify -- but I believe that's similar to what we talked about a couple of pages ago. That would be the average score of the balances in the portfolio at the end of each of those fiscal periods.

Q. Okay.

A. On a weighted-average basis.

Q. All right. So what -- what was -- obviously there's a pretty significant increase in the percentage of sales financed in Fiscal Year 2013 and Fiscal Year 2014, right? That num- -- that bar is going up?

A. It is certainly higher than it was in '11 and '12.

Q. Okay. And the bar representing Fiscal 2013, that would be mostly loans originating in Calendar Year 2012, right?

A. That is correct.

Q. Okay. And same for Fiscal Year 2014, mostly loans originated in Calendar Year 2013?

A. That's correct.

Q. So was there a strategy or something going on at Conn that was driving that number higher during those years?

A. Yes. This -- this relates back to the discussion we had earlier about product. So prior to Fiscal '12, which was Calendar 11, beginning of Calendar '11 is when we had the CEO change to Theo Wright. And we began making strategy changes related to products merchandise.

So we eliminated -- we talked about on TVs, we stopped selling all of those low-price points, lower margin, smaller TVs. We went through and eliminated whole product categories. We got rid of small appliances. So blenders, mixers, musical instruments, iPods -- or, you know, MP3 players. We eliminated a lot of low-price point products.

So TVs at low-price points, washers and dryers, refrigerators, mattresses, all of those things resulted in eliminating a lot of cash business that we used to do. So it wasn't a result of underwriting changes. It was really we changed the merchandising mix to a mix that was more likely to require financing.

Q. Okay.

A. Which is part of what's showing here why the average score in the portfolio hasn't changed much. It wasn't that we started getting more aggressive in underwriting. That -- what drove it was the percentage sales financed is the mix of products we sold and the elimination of a lot of the cash business.

Q. Okay. But the line, however, would you assume that the line represents the current credit portfolio and doesn't include the charge-offs?

A. I would have to confirm, but I -- I would expect that that is -- the current portfolio balance at their most current score is what I believe this is representing.

Q. Okay. And if -- if you were doing a line that showed credit score at origination, you would -- you would see a decrease -- you would see that line going down over Fiscal Year '13 and part of Fiscal Year '14, right, because that was part of your store-opening

strategy?

A. I'd have to -- the store-opening strategy did not have a significant impact on the average score. What had -- and I'd have to pull the data back up for those periods. What did have a bigger impact on the origination score was the fact that we started using Synchrony or GE at the time, for the long-term, no-interest promotions.

So they took a lot of the high FICO score business that we had been doing. But the impact of the new score -- new-store strategy would not have had a -- I don't believe had a significant impact on the average FICO score. Because it was just such a small piece of the business.

Q. Okay. But your -- your overall credit mix during that period of time was trending towards lower FICO scores at origination?

A. It trended -- we'd have to -- I'd have to get the data, but the average FICO score dropped slightly.

Q. Okay. And the -- the -- the percentage of sales that you were financing was rising significantly?

A. The percentage of sales we financed did increase somewhat, and it was due to change in the merchandising mix.

Q. Okay. So I don't want to spend a lot of time

So we would reduce the total balance due from the customer by the interest component, as well as recoveries -- cash recoveries.

Q. Okay. And the -- the percentages are -- what's the ratio, the charge-off is a ratio of what to what to get this percentage? Is this the total credit portfolio, or what do those percentages represent?

A. The -- for the net charge-off --

Q. Yes.

A. -- it is the -- so similar to the provision calculation. For the quarter, it will be the quarterly net charge-off dollars annualized, so times four divided by the average balance for the quarter.

Q. Okay. So you can see from the chart starting in the first quarter of Fiscal Year 2014 through the end of this chart, which is the end of Fiscal Year 2014, there's a pretty pronounced upward trend in net charge-offs, yes?

A. There is an increase in charge-offs in the fourth quarter.

Q. So what -- what was the reason for that; what -- what caused that?

A. I'd have to go back and -- and refresh my memory. Certainly growth in the portfolio had a -- was starting to drive an impact. I'd have to go back and

refresh my memory on -- on that from two years ago.

Q. So I understand, Mr. Poppe, why growth in the portfolio would increase your aggregate absolute dollar amount of charge-offs, because you have more loans in the portfolio. Why would growth in the portfolio increase the percentage of net charge-offs?

A. Depends on the timing of the growth. So it depends on -- I don't recall if the portfolio was still growing at a rapid rate in that quarter, or if it's just that I -- if it's all -- just if there were other factors driving aggregate charge-offs. I'd just have to go back and refresh my memory on what drove it. I couldn't -- couldn't answer the question right now.

Q. What would you need to look at to answer that question?

A. Have to go look at -- probably look at delinquency trends and go look at -- go look at some of the -- the vintage analysis what -- you know, what origination periods might be contributing.

Q. Okay. Page 29 of the presentation, please, which is CONNS -5251. I just want to ask you: Down on the bottom, there's a note that says: "Retail gross margin includes product sales and repair service agreement ('RSA') commissions."

So I know what those are. What -- do you know

Do you see that?
A. Yes.
Q. And Conn responded that: "Accounts are primarily B/C/D rated at origination."
Do you see that?
A. I do.
Q. Okay. So my question is: Do you know what, if anything, Conn did to understand what these letter rankings or these -- these categories meant to make sure that it understood what Garnet was asking?
A. I -- I don't know what conversations Clint and the team might have had with Garnet or what instructions they might have gotten with Garnet.
Q. Okay. Did you have any discussions or follow-up with Garnet or your team on that question?
A. Not that I recall specifically.
Q. Okay. So -- but the question arises because, you know, we looked at the investor presentation and we've had some discussions about what subprime means, and we looked at your distribution chart. And if D is subprime, most of the loans that Conn's originates are subprime under that standard you give me of 6 -- below 630 to 650, correct?
A. High percentage are -- would be subprime. That's right.

strike that.

So in the -- in the PSA -- I think I have it. I can show it to you. But I think you'd agree with me that Conn didn't warrant that the accounts it was selling would be collectible, right?

A. I believe that's correct.

Q. Okay. So excluding certain accounts is because you think that there will be some external impediment to collecting them, that you won't even be able to try to collect them for some reason, right?

A. Or at least the buyer believes that, right, and believes they're not worth pursuing.

Q. Kind of the difference between an account that won't pay and an account that you can't ask to pay for some legal reason?

A. Potentially can't ask to pay. That's right.

Q. Okay. And the -- the assumption in this transaction and in sales of those accounts are that the buyer should at least be able to go out and ask the borrowers to pay. There shouldn't be some legal impediment that prevents them from asking -- trying to collect?

A. Generally, that makes sense, yeah.

Q. Okay. So to put it another way, Conn's won't warrant that you'll be able to -- that this borrower --

strike that.

In other words, Conn's won't represent or warrant that any particular accountholder will pay, right; that's a risk the buyer's taking?

A. Right. They're taking the risk on the ultimate ability to collect.

Q. On kind of the economic part of it, right?

A. Yep.

Q. But Conn will rep and warrant that the buyer will be able to ask the borrower -- ask the borrower to pay?

MR. HEARTFIELD: Objection; form.

A. They will warrant that the accounts are free and -- and stand behind these specific items defined in the PSA.

Q. (BY MR. WRONSKI) Okay. But generally speaking, you agree that Conn is representing and warranting that there's nothing that would prevent the buyer from trying to collect, from asking the borrowers to pay?

A. Conceptually, that makes sense.

Q. Okay. You can put that one aside then.

Okay. Let me show you what was previously marked as Exhibit 48. You can take as much time as you want to look at that, but I believe it's the offering

months, they're going to charge off at 210 --
Q. Okay?
A. -- right.
If we have somebody who -- just making up a hypothetical. Tax reason, they're current. They get to tax season. They get their refund. They make three monthly payments on the account. And they -- they give us, you know, probably $100 monthly payment, they give us $300, they're now two months paid ahead, okay?
Q. Okay?
A. So when they get to 120 days past due, they're also six months, no payment.
Q. I see.
A. So go one more month, they charge off at 150.
Q. Okay. I understand. Thank you. That was really helpful.
Okay. So when that policy was in place, then, though, prior to charge-off, those accounts would be in the credit portfolio, and there would just be a bad debt provision against them?
A. It would be in active collections and would be considered in the reserving process.
Q. Okay. All right. So then effective July 31st of 2011, you charged the charge-off policy, right?
A. That's right.

Q. Okay. And so what was the new policy?
A. It was based on contractual delinquency, and if the account was over 209-days past due at the end of the month, it charged off.
Q. Okay. And so what was the -- what was the purpose for that change in policy?
A. Part of it was just to put -- implement something more conservative from a public-market standpoint, there was always some confusion around the charge-off policy. That wasn't the -- the key driver. It was also -- that was not an efficient way to manage the portfolio.
So we -- that customer, if they made that one payment, they would stay in active collections, and we would continue to collect on that account for another seven months, and maybe not get another payment until seven months from now. And concluded that the cost of keeping that customer in collections and the daily work on an active portfolio basis was more expensive than the benefit we were getting of leaving them in the portfolio.
So it was to clean up the portfolio and move a lot of the longer delinquent likely nonpayers out of the portfolio faster. So our collection activity was more efficient and focused on people more

and then they're rolling into charge-off.
Q. Okay. And is that a -- is that a stat that you keep?
A. We track first payment default rates --
Q. Okay?
A. -- which would be they never made a payment.
Q. Do you have any other metric for -- that you track for -- at any other -- at any other point in, say, the first 12 months of the life of the account?
A. Such as -- you mean --
Q. Well, you say you track first payment. Do you track 6 payment, 12 payment, any other --
A. To charge-off? No, I don't think -- I can't think of a report I've seen that looks at it that way.
Q. Okay. So the -- I'm sorry. What did -- what was the phrase you used, "early paid default"?
A. Early paid default, first pay defaults.
Q. Okay. First pay defaults, were those higher in 2013, Fiscal Year -- I'm sorry -- in Fiscal Year 2014 than Conn's had previously experienced?
A. If you look over a long period of time, yes.
Q. Okay. And are those rates reported anywhere publicly that you're aware of?
A. At times, we -- we didn't report it all the time. But we did talk about -- I couldn't tell you

Q. Okay. So you have the Sherman PSA in front of you, right?
A. Yes.
Q. So that's dated as of September 15th of 2014, correct?
A. Yes.
Q. Okay. So my question is: At -- at any time before that date, did anyone at TF LoanCo ever tell you that TF LoanCo was unable to fund further deliveries of accounts from Conn?
A. They told us they were -- they -- the reas- -- ultimately, they told us they were unwilling to fund.
Q. Okay. So they never told you they were unable to fund?
A. They never -- I don't recall specifically having that conversation.
Q. Okay. Do you recall generally having that conversation?
A. No.
Q. All right. Do you remember any communication with TF LoanCo where TF LoanCo conveyed to you that it was having difficulty funding the transaction?
A. No, they did not communicate, to my knowledge, difficulty in funding. Only in the fact that they continued to look for ways to have us finance the

transaction for them.

Q. Okay. They were proposing a different structure for the deal?

A. Right. They wanted -- yes, they wanted to renegotiate and were trying to get financing from us.

Q. Okay. And sitting here today, you don't know whether they did that because they thought that was just more economically beneficial for them or whether they were unable to get financing from other sources, correct?

A. Correct. I don't know ultimate -- what was really driving them.

Q. Okay. Same date of reference, September 15th of 2014, did anyone from Garnet ever relay to you that TF LoanCo was unable to fund further deliveries of accounts from Conn?

A. Not to me directly. And I couldn't tell you if they relayed something like that to Robert or Clint.

Q. Okay. At any point in time before Sep- -- I think you just answered it, but I'm going to -- I'm going to make sure that I know because you said "they," and I want to -- by "they," I think you meant Garnet, but I'm going ask anyway.

At any point before September 14th -- 15th of 2014, did anyone from Conn report to you that

they had been told by someone at TF LoanCo that TF LoanCo was unable to fund future deliveries of accounts from Conn?
A. Not that I recall.
Q. Okay. Okay. Do you recall that at some point in time while -- I don't know what you want to call them -- discussions, negotiations with TF LoanCo were ongoing, Garnet made the suggestion to Conn that it go back to Sherman and investigate whether there could be a deal still with Sherman?
A. I don't remember how or when the conversation initi- -- who or when it initiated, but there was a conversation about if they ultimately breached their obligation, you know, what would be next step? And Sherman was -- appeared to be the -- you know, the most sense -- make the most sense for the next step to -- if -- if Sherman was still interested.
Q. Okay. Just for purposes of timeline, I'm going to show you what's been previously marked as Exhibit 65, which is some email traffic between Mr. Bell, Mr. Walton, and Robin Ishmael at Garnet. And if you look near the center of the page, there's an email from Ms. Ishmeal that is talking about Sherman and Sherman's markup of the draft PSA and suggesting possibly, you know, going back to Sherman. Do you --

A. Our -- our assessment is -- was that it was an ability issue based on the conversations and the proposals they kept making to change the way it was financed. They weren't coming to the table to stop the sale. They were coming to the table to find a different way to finance the purchase.

And when we were unwilling to sell or finance the purchase, that's when they did not complete the transaction. So since the -- the core issues blocking completing that were around whether we would finance and how it would get -- which to us is funding the transaction, that was to us the core issue. That -- that's our assessment. Agreed, they never said that.

But in the path of the discussions during that time frame, it was -- you know, they were -- kept coming back with alternative financing structures to have us fund the assets. So that's what led us to this looks like a funding issue to us. Agreed, they never said that.

Q. And in addition to not saying that, they told you that the reason they wanted to restructure the transaction is because they wanted to put some -- they thought some of the economic risk of collection should have been put back on Conn because they didn't think

Q. Okay. So is it correct that prior to September 15 of 2014, you personally never had any direct communications with anyone at Sherman about this transaction?
A. Prior to September the 15th? I'd have to go back and look at my calendar to confirm that, and see if I can -- but I -- I don't recall having a conversation, but I'm not going to say for certainty that there wasn't.
Q. Okay. But sitting here today, you can't recall ever talking to someone at Sherman about this transaction before the deal closed?
A. I don't -- I remember conversations post. Right now I don't remember conversations prior to.
Q. Okay. Prior to September 15th of 2014, did you ever disclose to Sherman the name of the prior purchaser of the accounts?
A. Me personally?
Q. Yeah, you personally.
A. I don't recall even having a conversation with them prior to the 15th, so based on that, I would say probably not.
Q. Okay. Do you know whether anyone else at Conn disclosed the name of TF LoanCo as the prior purchaser before the Sherman transaction closed?

A. I'm not aware of anybody at Conn's or at Garnet would have communicated that.

Q. Okay. Prior to September 15th of 2014, did you personally disclose to Sherman that Conn had filed suit against TF LoanCo in connection with the accounts?

A. I -- based on prior comment, I -- I don't recall having any conversations directly with Sherman.

Q. Okay. And do you know whether anyone else at Conn disclosed the existence of the TF LoanCo litigation before the Sherman transaction closed?

A. No, I don't know.

Q. Okay. Prior to September 15th of 2014, did you personally disclose to Sherman any of the issues that TF LoanCo had raised during its discussions with Conn about the accounts?

A. Again, I don't recall having a direct discussion with anybody at Sherman.

Q. Okay. And do you know whether anyone else at Conn disclosed the issues that TF LoanCo had raised with Conn about the accounts during your negotiations with TF LoanCo?

A. I do not.

Q. Okay. Let's talk then about the disputes or negotiations post close with Sherman.

Okay. So you've got that in front of

We'd like to understand what issues or problems you're seeing because this is a surprise to us."

Q. Okay. And so what -- was that being reported to you at the outset, or were you involved from the outset?

A. Initially reported, and then I had the call with somebody. I had a call with somebody at Sherman.

Q. Okay. All right. So did you understand that Sherman had raised some complaints about incomplete media in connection with the sale?

A. I -- I generally recall there was a topic about getting -- getting -- making sure we got the completed media, and understand ultimately that the completed media was delivered.

Q. Okay. Did you understand, though, that it wasn't complete at the outset --

A. Initial- --

Q. -- and it wasn't delivered when it was supposed to be?

A. That's generally my understanding, yes.

Q. Okay?

A. I don't have all the specifics.

Q. Okay. And do you recall that Sherman was raising concerns about the validity of the account balances?

the time frame that there was work being done on strategic alternatives review and was working with somebody to help them map how the cash flows from credit insurance and RSA refunds, just how they flowed through the process.

Q. And are -- does that refer specifically to the refunds that happen upon the charge-off of an account or when they're canceled or --

A. Anytime. Just anytime.

Q. Okay. All right. You can put that aside.

So we've discussed generally what you recall. I think about one or more, possibly more, conversations that you had with Sherman about these disputes. Is there anything else that you recall specifically about conversations with Sherman or conversations with Garnet about Sherman in relation to those disputes, other than what you've already testified to?

A. Not that I recall at this time.

Q. Do you have any notes or anything else that might improve or refresh your recollection?

A. Not -- I don't think so.

Q. All right. I want to talk then about the subject we just touched on a second ago, the refund of unearned RSA balances upon charge-off, okay?

A. Yes.

Q. So I understand that in the relatively recent past, there's been a change in Conn's practice and policy on that. So could you describe for me the old policy, when the change was made and what the new policy is?

A. I don't remember exactly when the change was made. I would have -- I'd have to go get that date. But the old policy and practice had been when a repair or service agreement was cancelled upon charge-off, the unearned premium was collected by the -- by the company and retained by the company and not credited to the customer's balance. And then subsequent to the change, the new practice is to credit the unearned portion of the premium to the customer's charge-off balance.

Q. Okay. And my understanding is that that change was made in early 2015; does that sound right?

A. Sounds like it's in the ballpark.

Q. In the ballpark? Okay.

Why was that change in policy made?

A. As a matter of course over time similar to -- we looked at a change in the accounting for charge-offs, too. We continue to review practices, procedures, and policies. And as we identify areas that we think would be better suited to change, we'll

-- we'll make those changes if we think it's appropriate.

Q. Sure. Okay. I understand that.

A. Just natural evolution.

Q. So why was it appropriate? I understand that you periodically look at your policies and change them when it's appropriate. That doesn't tell me why you changed this particular policy.

A. You know, I'm trying -- trying to recall what raised the question specifically that made us go back and decide to -- to change that -- that policy on the accounts. Could have been triggered just by some of the discussions. You know, talked about the credit insurance RSA refund flow. It may have been triggered by some of the discussions we were having during the strategic alternative's review. There's a number of different things that would bring that topic up that may have triggered the discussion.

Q. Do you recall that it's an issue that TF LoanCo raised in connection with your discussions and some questions about the accuracy or validity of the account balances that it had been given?

A. They -- they did raise that question sometime after they stopped purchasing, yes.

Q. Okay. Did they raise that question before the

accounts were sold to Sherman?

A. No. I do not believe so. I believe it was several months later.

Q. Okay. Had you been evaluating or aware of that issue before TF LoanCo raised it?

A. As far as that issue, what do you mean by "that issue," TF LoanCo's issue or --

Q. The RSA credit issue.

A. I mean, what do you -- what do you mean by "that issue," that -- that TF LoanCo was going to have an issue with it? No, I was not aware they were going to have an issue.

Q. No, the fact that you were not accounting for that or handling that apparently in -- at a minimum best practice.

A. No, from the best practice standpoint, no, that wasn't something that we had -- when we -- I -- we -- if we had identified it previously as something that we felt would have been a better best practice, we would have done it sooner when it did come up. No, we reviewed the process. We did -- when we ultimately decided to make the change.

Q. But you don't remember how it came up?

A. Specific, no. I mean, it -- there were so many things around that topic. We spent a lot of time

walking -- when we were doing the strategic alternatives review, we spent a bunch of time walking the bankers and potential investors through how all the cash flows moved and had questions from them on why you do this, why you do that. Why is insurance different than RSA, et cetera.

Q. Okay. And so why did you change the policy?

A. Because we felt as we reviewed and talked about it internally that it would be a better practice.

Q. Why?

A. More consistent with the way we treat other -- we treat credit insurance, for one.

Q. Okay. Did you determine that in fact Texas law required you to do it and you hadn't been in compliance with Texas law?

A. We became aware of that in the process, too.

Q. Okay. So when -- when did you start the strategic alternative discussion? I'm trying to put some parameters around when you may have started looking at this issue.

A. I'm trying -- that was October -- Octoberish of '14, I think, is when that began. It was late Calendar '14, and then rolled into the better half -- you know, the first part of Calendar 15 before we ultimately completed the big ABS transaction in

September, which was kind of the culmination of the whole strategic alternatives review process.

Q. Okay. When did you discover that at least as to accounts that had been originated in Texas that you were not in compliance with Texas law in connection with the treatment of unearned RSA?

A. I don't remember the specific date. We'd have to go back and...

Q. Was it in 2014?

A. Really, I don't recall.

Q. No idea at all?

A. No.

Q. Did it come up in the context of the TF LoanCo; is that how you learned about it, TF LoanCo litigation?

A. Possibly, but I'm -- I don't recall specifically.

Q. So when you were having your discussions with Sherman in late 2014 and early 2015, no one from Conn told Sherman that the account balances were inaccurate or overstated because they included unearned RSA?

A. I do not know if anyone had a conversation with Sherman about whether that -- about the change in the RSA process.

Q. You didn't tell them that personally?

A. I didn't personally. I don't know if anybody else did or not.

Q. All right.

(Exhibit Nos. 90 and 91 were marked.)

Q. (BY MR. WRONSKI) Okay. I want to show you what's been marked as Exhibits 90 and 91.

MR. WRONSKI: In that order, Thad.

Q. (BY MR. WRONSKI) So Exhibit 90 is Conn's disclosure of expert witnesses in this case. Okay. Sorry. Exhibit 90 is the -- the report in the form of a declaration of Mr. Bruce Blacker, who is the damages expert that's been retained by Conn in this case.

And Exhibit 91 is one of the spreadsheets that were in his working papers that were produced with that report. So my first question is: Have you ever seen either of these documents before?

A. I do not believe so.

Q. Okay. Have you ever spoken with Mr. Blacker, and I'll say in connection with the preparation of this report or his retention by Conn in this litigation?

A. I do not believe I've ever spoken with Mr. Blacker.

Q. Okay. And I take it from your responses that you did not review or comment on any drafts of this report before it was filed in this case on

Q. Okay. So if that number -- well, No. 1, do you agree with that methodology; do you agree that Sherman should been titled to a credit for the unearned RSA on these accounts?

A. Based on the discussion we had about the Texas Occupation Code, I think it's a reasonable request to say that the purchaser price would be adjusted by the -- the unearned RSA balance.

Q. Okay. Now, are you aware of anything in the PSA that allows Conn to simply credit Sherman for a portion of the balance if the account balance is inaccurate and a portion of it is not collectible?

A. I'd have to go through the agreement and get legal counsel's review on what the -- what the allowable cure provisions are in the document. I couldn't tell you off the top of my head.

Q. Okay. All right. I'd like you to look at Exhibit 91, then.

So Exhibit 91 was prepared by Mr. Blacker, and it's a summary of the accounts that Sherman did take delivery of, okay, the bulk and then the first two flows; do you see that?

A. I do.

Q. Okay. And he's -- he's basically going across and tabulating a number of things. But it includes in